HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.12474 of 1997

Dated 23rd Day of February, 2007

Between:

M/s.Venus Solvent Oils Pvt. Ltd.,
Rajahmundry ..
Petitioner

And

The A.P. State Finance Corporation,
Rep. by its Managing Director,
Hyderabad
and two others ..
Respondents

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O R D E R:

This writ petition is filed seeking a mandamus to declare the action of the 1st and 2nd respondents in accepting the sale of the petitioner's unit in favour of the 3rd respondent for Rs.51.75 lakhs in pursuance of the Tender Notice dated 28.6.1996 and the consequential notice dated 20.3.1997 of the 2nd respondent demanding an amount of Rs.1,60,72,646.70 from the petitioner towards the alleged dues, as arbitrary and illegal.

On 5.12.1997, when this writ petition was admitted, no interim orders were passed. Therefore, the auction purchaser-3rd respondent has been running the unit for more than ten years and at this length of time, it may not be appropriate to disturb the 3rd respondent. As the auction was conducted under Section 29 of the State Financial Corporation Act, 1951, nothing can be done at this juncture. If the petitioner has any grievance, it is at liberty to pursue the remedy in accordance with law.

When this order was being dictated, the learned counsel for the petitioner requested this Court to grant time so that he would file necessary case law. Accordingly, the matter was adjourned number of times, but on some pretext or the other, the learned counsel for the petitioner took further adjournments. Even today, when the matter is taken up for hearing, a representation is made on behalf of the learned counsel for the petitioner seeking adjournment. As the matter was

already adjourned for five times, this Court has declined his request.

The learned counsel appearing for the 3rd respondent i.e. the auction purchaser has drawn my attention to the judgment of the Apex Court reported in **Mahesh Chandra Vs. Regl. Manager, U.P.F.C.**[1] wherein the Supreme Court held that the distribution of State largesse is only by way of public auction, but the method of calling for tenders should not be resorted to. But according to the learned counsel, this judgment was overruled by the Supreme Court in **Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another**[2]. It may be apt to extract the relevant paragraphs of the judgment as under:

> *"The aforesaid guidelines issued in Mahesh Chandra case place unnecessary restrictions on the exercise of power by Financial Corporation contained in Section 29 of the Act by requiring the defaulting unit-holder to be associated or consulted at every stage in the sale of the property. A person who has defaulted is hardly ever likely to cooperate in the sale of his assets. The procedure indicated in Mahesh Chandra case will only lead to further delay in realization of the dues by the Corporation by sale of assets. It is always expected that the Corporation will try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible.*
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> *The subsequent decisions of this Court in Gem Cap, Naini Oxygen and Micro Cast Rubber run counter to the view expressed in Mahesh Chandra case. In our opinion, the issuance of the said guidelines in Mahesh Chandra case are contrary to the letter and the intent of Section 29. In our view, the said observations in Mahesh Chandra case do not lay down the correct law and the said decision is overruled."*

Having regard to the fact that the judgment reported in Mahesh Chandra case is no more good law and was overruled, this Court is of the view that the action of the respondents in calling for tenders under

Section 29 of the A.P. State Financial Corporation Act cannot be said to be arbitrary or illegal.

Hence, the writ petition is devoid of merits and the same is accordingly dismissed. No costs.

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23.02.2007

bcj

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[1] 1993(2) SCC 279

[2] 2002(3) SCC 496